APPENDIX "A"

CONSTITUTION OF THE UNITED STATES

The pertinent portions of the Constitution of the United States are as follows:

ARTICLE I, Section 8, [Clause 3]—To regulate Commerce with foreign Nations, and among the several States and with the Indian Tribes.

ARTICLE I, Section 8, [Clause 17]—To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.

ARTICLE VI, [Clause 2]—This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

APPENDIX "B"

FEDERAL STATUTORY PROVISIONS

The pertinent Armed Services procurement provisions are 70A Stat. 127-133, as amended, 10 U.S.C. 2301-2314. Section 2304 provides:

2304. Purchases and contracts: formal advertising; exceptions.

(a) Purchases of and contracts for property or services covered by this chapter shall be made by formal advertising. However, the head of an agency may negotiate such a purchase or contract, if—

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(8) the purchase or contract is for property for authorized resale;

(9) the purchase or contract is for perishable or nonperishable subsistence supplies;

(10) the purchase or contract is for property or services for which it is impracticable to obtain competition;

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(15) the purchase or contract is for property or services for which he determines that the bid prices received after formal advertising are un-

reasonable as to all or part of the requirements, or were not independently reached in open competition, and for which (A) he has notified each responsible bidder of intention to negotiate and given him reasonable opportunity to negotiate; (B) the negotiated price is lower than the lowest rejected bid of any responsible bidder, as determined by the head of the agency; and (C) the negotiated price is the lowest negotiated price offered by any responsible supplier;

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Section 2305 provides:

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(c) * * * Awards shall be made with reasonable promptness by giving written notice to the responsible bidder whose bid conforms to the invitation and will be the most advantageous to the United States, price and other factors considered. However, all bids may be rejected if the head of the agency determines that rejection is in the public interest.

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APPENDIX "C"

FEDERAL REGULATIONS

The Armed Services Procurement Regulations provide in pertinent part:

> "1-301 **Methods of Procurement.** It shall be the objective to use that method of procurement which will be most advantageous to the Government—price, quality, and other factors considered. Such procurement shall be made on a competitive basis, whether by formal advertising or by negotiation, to the maximum practicable extent, in accordance with the policies and procedures set forth in this Regulation. Procurement shall be effected by advertising for bids and thereafter awarding a contract to the lowest responsible bidder, in accordance with the detailed requirements and procedures set forth in Section II; except that procurement may be effected by negotiation when authorized by and conducted in accordance with the detailed requirements and procedures set forth in Section III. Procurement may also be effected, as provided in Sections IV and V, by such means as coordinated procurement or interdepartmental procurement.
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> 1-302.2 **Sources Outside the Government.** Irrespective of whether the procurement of supplies or services from sources outside the Government is to be effected by formal advertising or by negotiation, competitive proposals ("bids" in the case of

procurement by formal advertising, "proposals" in the case of procurement by negotiation) shall be solicited from all such qualified sources of supplies or services as are deemed necessary by the contracting officer to assure such full and free competition as is consistent with the procurement of types of supplies and services necessary to meet the requirements of the Military Department concerned, and thereby to obtain for the Government the most advantageous contract—price, quality, and other factors considered.

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3-100 **Scope of Part.** This Part deals with the nature and use of negotiation as distinguished from formal advertising, and with limitations upon that use.

3-101 **Negotiation As Distinguished From Formal Advertising.** Whenever supplies or services are to be procured by negotiation, price quotations (see ASPR Section XVI, Part 2), supported by statements and analyses of estimated costs or other evidence of reasonable prices and other vital matters deemed necessary by the contracting officer, shall be solicited from all such qualified sources of supplies or services as are deemed necessary by the contracting officer to assure full and free competition consistent with the procurement of the required supplies or services, in accordance with the basic policies set forth in Section I, Part 3, to the end that the procurement will be made to the best advantage of the Government, price and other factors considered. Negotiation shall thereupon be

conducted, by contracting officers and their negotiators, with the attention being given to the following and any other appropriate factors:

(i) comparison of prices quoted, and consideration of other prices for the same or similar supplies or services, with due regard to production costs, including extra-pay shift, multi-shift and overtime costs, and any other factor relating to price, such as profits, cost of transportation, and cash discounts;

(ii) comparison of the business reputations, capabilities, and responsibilities of the respective persons or firms who submit quotations (see ASPR 1-903);

(iii) consideration of the quality of the supplies or services offered, or of the same or similar supplies or services previously furnished, with due regard to the satisfaction of technical requirements;

(iv) consideration of delivery requirements (see ASPR 1-306);

(v) discriminating use of price and cost analyses (see ASPR 16-206);

(vi) investigation of price aspects of any important subcontract;

(vii) individual bargaining, by mail or by conference;

(viii) consideration of cost sharing;

(ix) effective utilization in general of the most desirable type of contract and in particular of contract provisions relating to price redetermination (see Section III, Part 4);

(x) consideration of the size of the business concern (see ASPR 1-302.3 and 3-104);

(xi) consideration as to whether the prospective supplies is a planned producer under the industrial mobilization program;

(xii) consideration as to whether the prospective supplies requires expansion or conversion of plant facilities;

(xiii) consideration as to whether the prospective supplier is located in a surplus or scarce labor area (see ASPR 3-105);

(xiv) consideration as to whether the prospective supplier will have an adequate supply of qualified labor;

(xv) consideration of the extent of subcontracting;

(xvi) consideration of the existing and potential workload of the prospective supplier;

(xvii) consideration of broadening the industrial base by the development of additional suppliers;

(xviii) consideration of whether the contractor requires Government-furnished property, machine tools, or facilities; or Government-operated test facilities;

(xix) consideration of contract performance in facilities located in dispersed sites; and

(xx) advantages or disadvantages to the Government that might result from making multiple awards.

3-102 **General Requirements for Negotiations.** No contract shall be entered into as a result of negotiation unless or until the following requirements have been satisfied:

(i) the contemplated procurement comes within one of the circumstances permitting negotiation enumerated in Section III, Part 2;

(ii) any necessary determinations and findings prescribed in Section III, Part 3, have been made;

(iii) such business clearance or approval as is prescribed by applicable Department procedures has been obtained; and

(iv) the prospective contractor has been determined to be responsible in accordance with ASPR Section I, Part 9.

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Procurement by Negotiation

Part 8- Price Negotiation Policies and Techniques

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3-801.1 General. It is the policy of the Department of Defense to procure supplies and services from responsible sources at fair and reasonable prices calculated to result in the lowest ultimate over-all cost to the Govenment. Sound pricing depends primarily upon the exercise of sound judgment by all personnel concerned with the procurement.

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Army Procurement Procedure 3-101 provides:

3-101 Negotiation as Distinguished from Formal Advertising.

a. **Competition.** The fact that a procurement is to be negotiated does not relax the requirements for competition. When supplies or services are to be procured by negotiation and when consistent with the accomplishment of procurement objectives, quotations or proposals shall be solicited from all such qualified sources of (as defined in ASPR and APP 1-201.9) supplies or services as are deemed necessary to insure effective competition and to insure that the procurement is made to the best advantage of the Government, price and other factors considered, in accordance with the basic policies set forth in Part 3, Section I, ASPR

and APP. Competition is not necessary in contracting for personal or professional services.

b. **Conduct of Negotiations.** Procurement by negotiation is less automatic than, and does not have the rigid limitations of, formal advertising bid and award procedures; it allows to a greater extent than formal advertising the exercise of sound business judgment but in no way decreases the responsibility for properly protecting the interests of the Government.

(1) Contracting officers should conduct contract negotiations to the best advantage of the Government. They may bargain with any number of interested suppliers at any time prior to the award of a contract, as deemed desirable and practicable. After receipt of the initial proposals, separate negotiations may be conducted with any source of supply submitting an offer. The contract should be placed with the supplier making the best final proposal and who has the requisite ability to perform.

. . . . . .

(2) Negotiation will be accomplished to the end that maximum pricing benefits from all negotiated transactions may be realized. Benefits are obtainable through complete negotiation of transactions, particularly when one or several of the proposals indicate, or it is otherwise evident, that further negotiation may result in better pricing. During negotiations potential suppliers must be informed of the provisions which will appear in the contract to be executed.

(3) During the negotiation of contracts, simultaneous coordination, to the greatest practical extent, shall take place among the contracting, technical, price analysis, legal, and industrial planning personnel. Instructions to be followed by negotiating teams will be prepared with full coordination of traffic management consultants in purchasing offices, and such teams will be directed to seek traffic management advice upon the appearance of new traffic elements (such as change in shipping points, specifications, etc.) in the negotiations.

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c. **Requests for Proposals.**

(1) When a procurement of supplies or services is to be announced in writing to prospective contractors for the purpose of requesting quotations and other terms as a basis for conducting negotiations, contracting officers shall use DD Form 747 (Request for Quotations) or a DD Form 746 (Request for Proposals and Proposal). See ASPR 16-201 and 16-203.

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Air Force Procurement Regulation, Paragraphs 2-000, 2-101, 2-102 provide:

2-000 Scope of Section. In recognition of the fact that formal advertising is the basic method of procurement by the Government, this Section gives detailed guidance to AF procurement per-

sonnel for adapting formal advertising procedures to use in fulfilling as many procurement requirements as possible. In particular, Part 20 sets forth many examples of special provisions which may be incorporated in Invitations for Bids to assure that the Government's requirements will be fully met and at the same time preserve the benefits of full and free competition which are inherent in formal advertising.

PART 1—USE OF FORMAL ADVERTISING

2-101 Meaning of Formal Advertising. Formal advertising involves three basic steps. First, the preparation of an Invitation for Bids, in the prescribed form, describing the requirement of the Government accurately and completely, but avoiding any limitations which have no reasonable relationship to the actual needs of the Government and which might tend to limit the number of bidders (see AFPI 2-201). Second, publicizing the Invitation for Bids through posting in public places, distributing to prospective bidders, and such other means as may be appropriate, in sufficient time to enable prospective bidders to prepare and submit formal bids before the time slated for public opening of bids (see AFPI 2-202). Third, awarding the contract, on the basis of the bids publicly opened, to that responsive responsible bidder whose bid is most advantageous to the Government, price and other factors considered. (See Part 4 of this Section.)

2-102 USE FOR FORMAL ADVERTISING

(a) **Statutory Requirement.** 10 U.S.C. 2304 (a) provides that all contracts for supplies or services, with certain stated exceptions, will be made by formal advertising. (See ASPR and AFPI Section III, part 2 for discussion of the exceptions.)

(b) **House of Representatives Report.** The House Committee on Armed Services, section 2(e) of House Report No. 1688 (84th Congress, 2nd Session, January 1956) accompanying H.R. 8710, has stated as follows:

The amendment adds a new subsection. In it, we have stated positively the intention of Congress that all procurement shall be by advertised bidding. We have said, in clear language, that none of the exceptions 2(c) (1) through (17) shall be used by the agency head unless the facts and circumstances in justification thereof are clear and convincing.

We mean by this that "borderline" cases or "Grey areas," as they are sometimes referred to, and any case in doubt or uncertainty shall be resolved in favor of advertised competitive bidding and not by resorting to these 17 exceptions.

The Comptroller General, in his vigilant examination of the operation of this Act and of procurement practices generally, will, as the agent of Congress, be fully advised and fortified by this firm expression of congressional intent. And moreover, no agency head can now be in any doubt

whatsoever as to what Congress expects of him. We cannot be more explicit.

We propose that the trend shall be toward advertised competitive procurement and that advertised competitive procurement will be the rule, that in every case in which the agency head or his subordinates look toward the exceptions of the Act, they are met with the expression of congressional intent in this act, as amended, that what they do must be supported by a justification which is both clear and convincing. And the Congress will examine the findings that are required under the act, from time to time, to determine whether this mandate is being followed. We are determined that the trend which prompted this inquiry, shall be reversed.

(c) **Air Force Policy.**

(1) The AF policy is to use formal advertising procedures whenever possible notwithstanding the existence of a negotiation authority under 10 U.S.C. 2304(a) and ASPR and AFPI Section III. Part 2. Thus negotiation authority will be used only when the facts and circumstances of the procurement clearly indicate the need to use the authority. For example, 10 U.S.C. 2304(a)(9) authorizes the procurement of perishable subsistence supplies by negotiation. Milk is perishable subsistence as defined in AFR 145-11 and Rulings and Interpretations of the Walsh-Healy Public Contracts Act, but troop issue requirements are adequately covered by specifications and competition is generally available, accordingly,

such procurements of milk should be advertised when volume quantities are involved.

(2) Before the negotiation authority of ASPR 3-202 or 3-210 is used, officials approving determinations and findings (see AFPI 3-306(b) will satisfy themselves that formal advertising procedures cannot be used without detriment to the Government, and that the facts and circumstances in justification of negotiation are clear and convincing.

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APPENDIX "D"

PERTINENT FLORIDA STATUTORY PROVISIONS AND LEGISLATIVE HISTORY

A. The entire Florida Milk Commission Act, Chapter 501, Florida Statutes, 1961, at Page 2220, is set forth in the Appendix to the Jurisdictional Statement. Some of the pertinent parts of the Act are as follows:

[2222] **501.04 Powers of milk commission.**—The milk commission is declared to be an instrumentality of the state for the purpose of attaining the ends recited in the legislative findings, and may:

(1) Supervise and regulate the entire milk industry of the state, including the production, transportation, manufacture, storage, distribution, delivery and sale of milk, cream and milk products, *in any market established by the commission in the state;* provided, however, that nothing contained in this chapter shall be construed to abrogate or affect the status, force or operation of any provision of any law relating to public health or sanitation, the purity of food or food products, (the public health law, the public service law, the state sanitary code), milk products law, except as provided for in §501.09(4), state ice cream law, or any local health ordinance or regulation; and provided, further, that nothing in this chapter shall give the commission power to make rules or regulations prohibiting the giving away gratis of milk or milk products in cases of charity.

(2) Investigate all matters pertaining to the production, processing, storage, transportation, distribution and sale of milk in the state.

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[2223] (9) Make, adopt and enforce all rules, regulations and orders necessary to carry out the purpose of this chapter; hold hearings after reasonable notice thereof has been given; receive sworn testimony and evidence at hearings as to the reasonableness of any order, rule or regulation of the commission; *reasonably classify and establish definite market areas,* and provide different rules, regulations and charges therefor; establish health and sanitary requirements. The commission after public hearing and investigation may fix the prices to be paid producers by distributors, milk dealers or producer-distributors in any market or markets; may fix the minimum and maximum wholesale and retail prices to be charged for milk in any market, and may also fix different prices for different grades of milk; may establish the grades of milk; may establish reasonable rules and regulations for fair competition, and fix reasonable rules and regulations for the conduct of the commission's business and for the regulation of its employees; may require reasonable examinations of license applicants to test their general fitness to engage in any business defined in this chapter; may establish rules and regulations for hearings in keeping with the procedure herein authorized; may revoke, suspend or refuse to issue the license of any person hereunder for the violation of any rule,

regulation or order of the commission, after due notice and a fair hearing as herein provided; may provide for the collection of license fees authorized by this chapter, and may regulate all matters reasonably incidental to the general or specific powers herein recited; may provide for deputy administrators in any market area created by the commission, with such authority as may be designated by the commission, including the power to investigate complaints, report violations of the commission's orders, and to have such other powers reasonable or incidental thereto, including the right to administer oaths, make investigations, conduct hearings when ordered by the commission, and on due notice to take testimony in connection with investigations of complaints, and to cause the same to be stenographically transcribed and reported and transmitted to the commission for final action thereon, together with such other authority as the commission may designate in keeping with the general powers and purposes created under this chapter.

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501.05 Rules and orders of milk commission.—

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[2224] (3) The relationship between a producer and a distributor, under which milk produced by the producer is regularly delivered to and accepted by the distributor, when once established, shall not be terminated either by the producer or by the distributor

without just cause therefor, and the approval of the commission. Just cause will be considered by the commission as any cause deemed just by a prudent and reasonable man.

Arbitrary, capricious and vindictive reasons will not be considered as just cause for any such termination.

(4) The commission shall set a standard date as the date from which not less than ninety days written notice in writing and in advance must be given by the producer or the distributor involved to the other before any such theretofore established relationship may be terminated; unless such notice is given, such relationship will not be terminated, even though just cause exists for termination, unless just cause exists excusing the failure to give such notice.

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[2225] **501.09 Issuance, revocation, etc., of licenses to milk dealers.—**

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(3) (a) That a milk dealer has rejected, without reasonable cause, any milk delivered to and accepted by the milk dealer from a producer delivered by or on behalf of the producer in ordinary continuance of a previous course of dealing, or that a milk dealer has rejected without reasonable cause, or has rejected without reasonable advance notice, any milk

tendered or offered for delivery to the milk dealer by or on behalf of a producer in ordinary continuance of a previous course of dealing. It is intended hereby to provide and require that a milk dealer shall not reject or refuse to accept any milk tendered or offered for delivery by or on behalf of a producer in ordinary continuance of a previous course of dealing unless there exists reasonable cause for the rejection or refusal to accept such milk and unless the milk dealer has also given such advance notice as may be reasonable under the circumstances of intention to reject or refuse to accept such milk.

[2226] On or before the tenth day of each month each distributor shall make a report under oath to the commission upon such form and containing such information as the commission shall prescribe; but each report shall specifically, and in addition to all other information which may be required by the commission, contain and set forth:

(a) The number of gallons of milk produced; the number of gallons of milk received; and the number of gallons of milk distributed by such distributor during the preceding calendar month; and

(b) The name and address of each producer or any other person from whom the distributor purchased milk for distribution during the preceding calendar month and the quantity of [2227] milk purchased from each producer or other person, and the price per gallon paid to each producer or other person for milk so

purchased, and the number of gallons purchased by such distributor if such distributor be also a producer.

For the privilege of continuing in or engaging in the business of distributing milk or acting as a distributor under the provisions of this chapter, there is imposed upon every distributor a tax in an amount equal to fifteen-one hundredths of one cent upon each gallon of milk distributed by each distributor during each calendar month. The amount of such tax shall be remitted by each distributor to the commission at the time that the monthly reports are required to be filed by the distributor with the commission as provided by this chapter.

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Any person subject to the provisions of this chapter failing or refusing to furnish any return required to be made or failing or refusing to furnish a supplemental return or other data required by the commission or who shall violate any of the provisions of this chapter, including failure to secure a license or who shall violate any valid rule or regulation of the commission, or who shall secure a license upon false or fraudulent application, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not exceeding five hundred dollars or by imprisonment in the county jail for not exceeding six months and each offense and each day of violation shall constitute a separate offense.

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[2228] (6) For the privilege of continuing in or engaging in the business of producing milk, or acting as a dairy farmer under the provisions of this law, there is hereby imposed upon every dairy farmer a tax in an amount equal to fifteen-one hundredths of one cent upon each gallon of class I milk produced, as defined by the commission, by each such dairy farmer, and delivered to the platform of the distributor or producer-distributor during each calendar month. The amount of such tax shall be deducted by the distributor and the producer-distributor from the moneys due to the dairy farmer, and by such distributor or producer-distributor remitted to the commission at the time that the monthly reports are required to be filed by the distributors or producer-distributors with the commission, as provided by this chapter, and in the event the dairy farmer acts as his own distributor he shall remit the said tax to the commission at the time that the monthly reports are required to be filed by the distributor and producer-distributor with the commission, as provided by this chapter.

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[2229] **501.13 Order by commission fixing price of milk.—**

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[2230] (4) The commission after making such investigation either on its own initiative or on complaint of a representative group of producers supplying a particular dealer or a particular market may fix by official order the prices to be paid by milk dealers to producers

and others for milk and its various grades and uses. The order of the commission with respect to the prices to be paid to the producers and others shall apply to the locality or zone in which the milk is produced, the market or markets in which the milk so produced is sold, and may vary in different localities or markets according to varying uses and different conditions. Each order may classify milk by forms, classes, grades or uses as the commission may deem advisable and may specify the price therefor. A violation of this subdivision shall render such persons offending this chapter specifically subject to the provisions of §501.08.

(5) After the commission has fixed prices to be charged or paid for milk whether by class, grade or use, it is unlawful for a milk dealer to sell or buy or offer to sell or buy milk at any price less or more than such price or prices as shall be applicable to the particular transaction and no method or device shall be lawful whereby milk is bought or sold or offered to be bought or sold at a price less or more than such price or prices as shall be applicable to the particular transaction, whether by any discount, or rebate or free service, or advertising allowance or a combined price for such milk together with another commodity or commodities, or service or services, which is less or more than the aggregate of the prices for milk and the price or prices for such other commodity or commodities, or service or services, when sold or offered for sale separately or otherwise.

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[2231] (8) It is the intent of the legislature that the instant, whenever that may be, that the handling within the state by a milk dealer of milk produced outside of the state becomes a subject of regulation by the state, in the exercise of its police powers, the restrictions set forth in this chapter respecting such milk so produced shall apply and the powers conferred by this chapter on the commission shall attach. After any milk so produced comes to rest within the state, any sale, within the state by a licensed milk dealer required by this chapter to be licensed, or any milk purchased from the producer at a price lower than that required to be paid for milk produced within the state purchased under similar conditions is unlawful.

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501.20 Exercise and withdrawal of exercise of supervisory and regulatory powers in markets.—

(1) The commission shall not supervise and regulate any market in the state which it does not now supervise and regulate, or from which the exercise of its supervisory and regulatory powers is hereafter withdrawn unless there is presented to it a written petition signed by not [2232] less than ten per cent in number of the producers and producer-distributors in such market, and representing not less than fifty per cent of the distributors buying milk from the base earned producers in such market, requesting it to exercise its supervisory and regulatory powers therein and unless, in a secret ballot election, to be called by the

commission as promptly as reasonably possible after the presentation to it of such petition, a majority in number of the producers and producer-distributors eligible to vote in such election vote in favor of the exercise by the commission of its supervisor and regulatory powers in such market. If in the election such majority in number vote in favor thereof, the commission shall supervise and regulate such market, but otherwise shall not do so.

(2) Whenever there is presented to the commission a written petition signed by not less than ten per cent in number of the producers and producer-distributors in any market in the state over which the commission is exercising its supervisory and regulatory powers, pursuant to this chapter, requesting the commission to withdraw the exercise of such powers from such market, there shall be called by the commission, as promptly as reasonably possible after the presentation to it of such petition, a secret ballot election among the producers and the producer-distributors in that market. In the event, in such election, a majority in number of the producers and producer-distributors eligible to vote in such election vote in favor of the withdrawal therefrom by the commission of the exercise of its supervisory and regulatory powers, the commission shall withdraw the exercise of such powers by it from such market, but otherwise shall not do so.

(3) The commission shall prescribe the procedure to be followed in calling, holding, conducting and ascertaining the results of the elections provided for herein

and may adopt reasonable rules, regulations and orders in regard thereto, but it shall insure that any election held hereunder is held by secret ballot, and that all those entitled to vote therein are given reasonable notice of the time and place of such election and reasonable opportunity to vote therein, provided, however, that the commission shall appoint a person or firm not a producer, producer-distributor or distributor or the commission or any member or employee thereof to conduct any such election called under the provisions of this section. Expenses of calling, holding, conducting and ascertaining the results of any such election shall be paid by the commission. The person or firm so appointed shall certify the results of the election to the commission promptly after such election is held.

The commission may schedule one election at one time and one place but in no event shall an election be held less than six months following an election; if, because of the size of the market involved, or for other reasons, the commission deems it advisable so to do for the convenience of those entitled to vote in such election, it may hold such election at more than one place within such market, and may designate different times and places within such market at which voting may be done. However, none of the votes shall be canvassed, nor shall any information concerning them be given or disseminated to anyone by the person or firm appointed to conduct the election, until all times fixed for holding such election have elapsed. In the event that any election is conducted at more than one location only one ballot box shall be used by the person or firm appointed by the commission.

(4) Determinations respecting numbers of producers and producer-distributors in any market shall all be made by the commission as of the end of the second calendar month preceding the month in which an election hereunder is called. All persons who were producers or producer-distributors in such market at the end of such second preceding calendar month shall be entitled to sign any such petition, and to vote in any election called hereunder, and shall be counted, regardless whether at the time of signing any such petition, or of its presentation, or of any election held hereunder, they are producers or producer-distributors in the market. Any who were not at the end of such second preceding calendar month producers or producer-distributors in the market shall not be counted in number, in determining the results of any election held hereunder, and shall be eligible neither to sign any such petition nor to vote in any such election, even though they may become producers or producer-distributors in such market after the end of such second preceding calendar month.

The number of producers and producer-distributors voting in the election shall be determined by the commission. In making such determination, the commission may obtain information from all available sources, including but not limited to, its own records and reports, the books and records of producers in the market, and the books and records of producer-distributors and distributors in the market, whether such books and records are kept, or are available, within or with-

out the geographical limits of the market. It shall make all such determinations as promptly as reasonably possible and with as much accuracy as is reasonably possible in order to make such determinations without undue delay, and its decisions in regard thereto shall be final.

(5) Whenever, under this section, the commission shall commence exercising, or withdraw the exercise of, its supervisory and regulatory powers in any market, it shall do so by order, and the time when such commencement or such withdrawal shall be effective shall be the date when the results of any election conducted under the provisions of this section are filed with the commission by the person or firm authorized to conduct such election.

* * * * * * * * *

[2233] **501.23 Penalty for violations.**—A violation of any provision of this chapter or of any rule or order of the commission lawfully made, except as otherwise expressly provided by this chaper, shall be a misdemeanor punishable by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year, and each day during which such violation shall continue shall be deemed a separate violation.

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MILK MARKETING AREAS—GENERALLY

IN THE MATTER OF ALLOCATING RECEIPTS OF A DISTRIBUTOR OR PRODUCER-DISTRIBUTOR TO CLASSIFICATIONS OF UTILIZATION AS TO SOURCE OF MILK; APPLICABLE TO ALL MILK MARKETING AREAS.

220-6.18 WHEREAS, the Florida Milk Commission, upon request from the industry and after investigation and through discussion, has now found and determined that a method for allocating various sources of milk receipts of a distributor or producer-distributor should be outlined to establish fair and uniform methods of allocating the utilization of milk within a plant.

NOW THEREFORE,

IT IS HEREBY ORDERED that:

(1) All receipts of a distributor or producer-distributor shall be allocated to utilization in the following manner:

(a) The base percentage earned by each producer shall be applied to the total number of gallons of milk utilized in Class I channels by each distributor and producer-distributor to determine the number of gallons of milk for which the producer must be paid at the Class I price fixed by the Commission.

In the event a producer fails to produce the amount of milk that his "earned base" entitles him to, in Class

I channels, such deficit must be reallocated to the other "earned base" producers in proportion to their "earned bases", and the Class I price paid for the milk so reallocated.

(b) The method outlined above for computing allocations to Class I utilization shall be followed in computing allocations for all other classes.

(c) First allocation of a producer's deliveries shall be to Class I utilization, with allocation continued thereafter in descending order of price through Class IV classification.

(d) In computing Class I sales to be allocated to producers, no adjustment shall be made for milk received by distributors and/or producer-distributors from sources other than "earned base" producers.

(e) In computing milk utilization to be allocated to producers, milk transferred or diverted shall be classified and allocated according to its final utilization.

(f) Milk imported for military sales in accordance with other orders and not utilized in military sales during the calendar month it is imported, shall be considered as other source milk for allocation, unless separate records and a complete physical separation of military milk is maintained at all times, with no borrowing or co-mingling between military milk and other plant milk.

(g) Other source milk shall be classified and allocated in the following order after base earned producer's milk has been allocated and in the same descending order of classification, I through IV:

FIRST: Milk from regular suppliers not having a base.

SECOND: Milk from distributors or producer-distributors within the area.

THIRD: Milk from distributors or producer-distributors from other Florida Milk Commission controlled areas.

FOURTH: Milk from other areas in Florida.

FIFTH: All other milk and milk products.

Exception to the above order of allocation: Any whole fluid milk that is dumped in accordance with prior notification as required by the Commission, shall be allocated to Class IV.

This order constitutes a reasonable regulation of the milk industry of the State of Florida in the several markets of the state supervised and regulated by the Commission, is necessary to carry out the purposes of Chapter 501, Florida Statutes, and is the regulation of a matter reasonably incidental to the general or specific powers given to the Commission by Chapter 501, Florida Statutes; and the Florida Milk Commission derives authority for the adoption of the order hereinabove recited from Chapter 501, Florida Statutes generally, and from Chapter 501.04, Florida Statutes, specifically.

DONE and ORDERED by the Florida Milk Commission at Sarasota, Florida, this 24th day of August, 1962.

[3] 220-1.05 Base fixing plan.—

(1) SCOPE: The base fixing plan in this section applies to the Pensacola Milk Marketing Area in Florida under the supervision or regulation of the Florida Milk Commission.

(2) DEFINITIONS: As used in this section and for its purposes, the following words have the meaning indicated:

(a) Producer—means any person, firm, partnership, corporation or association producing milk within the State of Florida, including, but not limited to, an association organized or incorporated under Chapter 618, Florida Statutes, producing milk, or whose members are producing milk, within the State of Florida.

(b) Distributor—means a distributor who operates a milk gathering station or processing plant where milk is collected and bottled or otherwise processed and prepared for sale within milk marketing areas of the State of Florida affected by this section.

(c) Producer-Distributor—A distributor who is also a producer producing at least seventy-five per cent (75%) of the milk he processes and prepares for sale.

(3) BASE FIXING PERIOD FOR AREA. The base fixing period for the Pensacola Milk Marketing area is as follows: Beginning September 1 and ending November 30, both dates inclusive, of each ensuing year.

(4) ESTABLISHING BASE; EFFECT.

(a) During the base fixing period, each producer shall establish with his distributor or producer-distributor a base, and each distributor or producer-distributor shall establish for each producer a base. A producer-distributor who has other producers shall establish a base with his own plant in exactly the same manner as the other producers establish their bases.

(b) Said base or bases shall be construed as a binding contract between producers and their distributors or producer-distributors, and said base or contract shall remain in full force and effect from the first day of the second month following the end of the base fixing period until the first day of the second month following the end of the next ensuing base fixing period, unless terminated in accordance with the provisions of Chapter 501, Florida Statutes.

(5) RECORDS OF DELIVERIES. During the base fixing period, each distributor and producer-distributor shall cause to be kept a complete record of all milk delivered by each producer.

(6) BASE PERCENTAGE; COMPUTATION AND APPLICATION.

(a) During the base fixing period, a base percentage shall be determined for each producer by calculating the ratio of the milk delivered by each producer to the total milk delivered by all producers for the entire base fixing period, which percentage is referred to herein as "earned base". This computation shall be

made immediately following the close of the base fixing period, and within thirty (30) days thereafter, each producer shall be notified by mail of his base percentage and the base percentage of all other producers participating in that particular base. During this period, each plant shall supply the local Deputy Administrator with a summary of its base computations. The producer notification must illustrate how the base percentage for the producer concerned has been determined.

1. The base percentage earned by each producer shall be applied to the total number of gallons of milk utilized in Class I channels by each distributor and producer-distributor to determine the number of gallons of milk for which the producer must be paid at the Class I price fixed by the Commission. In case a producer fails to produce the amount of milk that his "earned base" entitles him to, in Class I channels, such deficit must be reallocated to the other "earned base" producers in proportion to their "earned bases", and the Class I price paid for the milk so reallocated.

[4] 2. The method outlined above for computing allocations to Class I utilization shall be followed in computing allocations for all other classes.

3. First allocation of a producer's deliveries shall be to Class I utilization, with allocation continued thereafter in descending order of price through Class IV classification. The balance of any producer's produc-

tion after the above allocations may then be placed in the lowest price classification.

4. In computing Class I sales to be allocated to producers, no adjustment shall be made for milk received by distributors and/or producer-distributors from sources other than "earned base" producers.

5. In computing milk utilization to be allocated to producers, milk transferred or diverted shall be classified and allocated according to its final utilization.

(7) EXISTING BASES TO REMAIN IN EFFECT. Unless terminated in accordance with the provisions of Chapter 501, Florida Statutes, all existing bases and relationships between producers and distributors and/or producer-distributors shall remain in full force and effect until the first day of the second month following the end of the first base fixing period provided in subsection (3).

(8) EARNED BASES TRANSFERABLE. A producer's "earned base" may be transferred, provided the prior approval of this Commission is obtained. The transferor and the transferee shall make declaration to the Florida Milk Commission, upon forms to be provided by the Commission, of the full consideration for such transfer including, without limitation however, the nature and extent of any direct or indirect amortization of the consideration for such transfer. In the event any part or all of the considera-

tion to be paid to the transferor of his earned base shall be delayed beyond the date of delivery of control and possession of such "earned base", then in that event the title to such "earned base" shall be retained by the transferor during and throughout the full amortization of the consideration paid therefor. During such amortization period the Commission shall treat the earned base as if it were the property of the transferee provided the amortization schedule filed shall have been currently maintained by the transferee. The Commission may, upon default by the transferee, merge the legal and equitable title in the transferor.

B. Chapter 25, Section 1 and Section 3, Laws of Florida, 1845, Pages 42, 43, and 44:

Section 1. Be it therefore enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened, That the United States be, and they are hereby authorized and empowered to purchase, acquire, hold, own, occupy and possess such land or lands within the limits of this State as they shall adjudge it expedient, and shall seek to occupy and hold as sites on which to erect and maintain forts, magazines, arsenals, dockyards and other needful buildings, or any of them, as contemplated and provided in the Constitution of the United States, said purchases to be effected either by contract with the owner or owners of said land or lands, or in the manner hereinafter provided.

Section 3. Be it further enacted, That whenever the United States shall contract for, purchase or acquire any land or lands within the limits of this State for the purposes aforesaid, in either of the modes above mentioned and provided, and shall desire to acquire constitutional jurisdiction over such land or lands for said purposes, it shall and may be lawful for the Governor of this State, upon made to him in writing, on behalf of the United States, for that purpose, accompanied by the proper evidence of said purchase, contract, or acquisition of record, describing the land or lands sought to be ceded by convenient metes and bounds, and the said Governor shall be, and he is hereby authorized and empowered, thereupon, in the name and on behalf of this State, to cede to the United States exclusive jurisdiction over the land or lands so purchased or acquired and sought to be ceded; the United States to hold, use, occupy, own, possess, and exercise said jurisdiction over the same for the purposes aforesaid, and none other whatsoever. **Provided, always,** that the consent aforesaid is hereby given, and the cession aforesaid is to be granted and made as aforesaid, upon the express condition that this State shall retain a concurrent jurisdiction with the United States in and over the land or lands to be ceded, and every portion thereof so far that all process civil or criminal, issuing under the authority of this State, or of any of the Courts, or judicial officers thereof, upon any person or persons amenable to the same, within the limits and extent of the land or lands so ceded, in like manner and to like effect, as if this act had never been passed; saving, however, to the

United States security to their property within said limits and extent, an exemption of the same, and of said land or lands, from any taxation under the authority of this State, whilst the same shall continue to be owned, held, used and occupied by the United States for the purposes above expressed and intended, and not otherwise.

[Passed the Senate July 17th, 1845. Passed the House of Representatives July 21st, 1845. Approved by the Governor July 24th, 1845.]

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C. **Florida Statutes, 1961, Page 3.**

§602 United States authorized to acquire lands for certain purposes.—The United States may purchase, acquire, hold, own, occupy and possess such lands within the limits of this state as they shall seek to occupy and hold as sites on which to erect and maintain forts, magazines, arsenals, dockyards, and other needful buildings, or any of them, as contemplated and provided in the Constitution of the United States; such land to be acquired either by contract with owners, or in the manner hereinafter provided.

History—§1, ch. 25, 1845; RS 7; GS 5; RGS 5; CGL 5.
cf.—§§6.06, 253.21, Swamp and forest lands.

§§264.06-264.10, Everglades National Park.

APPENDIX "E"

PERTINENT GEORGIA STATUTES

The Georgia law provides in pertinent part:

ACT NO. 373, Georgia Laws of 1927, Pages 352 and 353. U. S. GOVERNMENT, JURISDICTION CEDED TO.

NO. 373.

An Act to provide for the acquisition of land in the State of Georgia by the United States for governmental purposes; to cede jurisdiction to the United States under certain limitations; and for other purposes.

Section 1. Be it enacted by the General Assembly of the State of Georgia, and it is hereby enacted by authority of the same, and the consent of the State of Georgia is hereby given, in accordance with the 17th clause, 8th section, and of the 1st article of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation, or otherwise, any land in this State which has been or may hereafter be acquired for custom-houses, post-offices, arsenals, other public buildings whatever, or for any other purposes of government.

Section 2. Be it further enacted by the authority aforesaid, that the exclusive jurisdiction in and over

any land so acquired by the United States shall be and the same is hereby ceded to the United States for all purposes, except that the State retains the right to serve thereon all civil and criminal processes issued under authority of the State; but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands.

Section 3. Be it further enacted by the authority aforesaid, that the jurisdiction hereby ceded shall not vest until the United States shall have acquired the title to the said lands by purchase, condemnation, or otherwise; and so long as the said lands shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all State, county, and municipal taxation, assessment, or other charges which may be levied or imposed under authority of the State.

Approved August 23, 1927.

ACT NO. 851, Georgia Laws of 1953, Pages 264 & 265: STATE JURISDICTION OVER CEDED TERRITORY.

Code § 15-302 Amended.

No. 851 (Senate Bill No. 265).

An Act to amend Section 15-302 of the 1933 Code of Georgia relating to the jurisdiction of the United

States over certain lands in this State so as to provide that the State shall no longer retain its civil and criminal jurisdiction over persons and citizens of any ceded territory used by the Department of Defense; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia as follows:

Section 1. Section 15-302 of the 1933 Code of Georgia relating to the jurisdiction of the United States over certain lands in this State is amended by inserting after the word "State" at the end of the second sentence thereof the words "except as to any ceded territory owned by the United States and used by the Department of Defense but the State retains jurisdiction over the regulation of public utility services in any ceded territory," so that said Section when so amended shall read as follows:

"15-302. Exclusive jurisdiction in and over any lands so acquired by the United States is hereby ceded to the United States for all purposes except service upon such lands of all civil and criminal process of the courts of this State; but the jurisdiction so ceded shall continue no longer than said United States shall own such lands. The State retains its civil and criminal jurisdiction over persons and citizens in said ceded territory, as over other persons and citizens in this State, except as to any ceded territory owned by the United States and used by the Department of Defense, but the State retains jurisdiction over the regulation

of public utility services in any ceded territory. Nothing herein shall interfere with the jurisdiction of the United States over any matter or subjects set out in the Acts of Congress donating money for the erection of public buildings for the transaction of its business in this State, or with any laws, rules, or regulations that Congress may adopt for the preservation and protection of its property and rights in said ceded territory, and the proper maintenance of good order therein."

Section 2. All laws and parts of laws in conflict with this Act are hereby repealed.

Approved February 15, 1952.